

**COURT OF CHANCERY  
OF THE  
STATE OF DELAWARE**

DONALD F. PARSONS, JR.  
VICE CHANCELLOR

New Castle County CourtHouse  
500 N. King Street, Suite 11400  
Wilmington, Delaware 19801-3734

Submitted: June 19, 2006  
Decided: August 15, 2006

Suzanne I. Seubert, P.A.  
1328 King Street  
Wilmington, DE 19801-3234

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Re: *In the Matter of Gilbert Acevedo*,  
Civil Miscellaneous No. 12524

Dear Counsel:

Ms. Seubert has moved for reargument on the Court's June 14, 2006 order (the "Order") directing the alleged disabled person, Gilbert Acevedo, to pay her \$700 in attorney's fees. The motion was submitted within the mandatory five-day period under Court of Chancery Rule 59(f). Petitioner, Nancy Hubbard, filed a response opposing the motion. For the reasons stated below, I deny the motion for reargument.

To obtain reargument, Seubert must show that the Court misapprehended material facts or misapplied the law<sup>1</sup> such that the Court's decision was affected.<sup>2</sup> Further,

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<sup>1</sup> *Goldman v. Pogo.com Inc.*, 2002 WL 1824910, at \*1 (Del. Ch. July 16, 2002).

<sup>2</sup> *Stein v. Orloff*, 1985 WL 21136, at \*2 (Del. Ch. Sept. 26, 1985).

Seubert must articulate a novel argument and cannot merely restate her previous arguments.<sup>3</sup>

Seubert seeks modification of two aspects of the Order. First, she seeks the full amount of the fees she requested, \$1237.50. Second, she seeks an amendment to require Petitioner, as opposed to Acevedo, to pay the attorney ad litem's fees. In support of the latter request, Seubert contends that this Court lacks jurisdiction over the estate of Acevedo.

Having reviewed the authority cited by Seubert on the jurisdictional issue, I find that argument unpersuasive. The Court did not exercise jurisdiction over Acevedo's estate, wrongly or otherwise.<sup>4</sup> Rather, the Order directed Acevedo personally, as an interested party in this litigation, to pay the specified amount. The Order was appropriate because Seubert's actions, including those she took after Petitioner sought to withdraw her petition, were for Acevedo's benefit. Thus, the Court did not misapply the law.

Similarly, the Court did not misapply the law or misapprehend the facts in rejecting Seubert's argument that Petitioner should pay her fees. Under the American

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<sup>3</sup> *Miles, Inc. v. Cookson America, Inc.*, 677 A.2d 505, 506 (Del. Ch. 1995) (citing *Maldonado v. Flynn*, 1980 WL 272822 (Del. Ch. July 7, 1980)).

<sup>4</sup> Under 12 *Del. C.* § 3901(e), the Court may exercise plenary power over a disabled person's estate after making a determination that an individual is disabled. As Seubert noted, however, the Court never reached the issue of disability in this voluntarily dismissed matter.

rule litigants generally pay their own attorney's fees. Although Petitioner ultimately withdrew her request for guardianship, there was no showing that she brought or prosecuted this action in bad faith. Hence, the American rule applies.

Seubert's reliance on Court of Chancery Rule 41(a)(1) is also misplaced. Rule 41(a)(1) allowed Petitioner to dismiss her petition voluntarily, "[s]ubject to payment of costs." Seubert suggests that the fees of a court-appointed attorney ad litem constitute costs under the Rule. She did not cite any authority to that effect, however, and the Court knows of none. Even assuming, however, that Seubert's fees could be characterized as "costs," the circumstances of this case justify charging those fees to Acevedo. Seubert acted beyond the normal duties of an attorney ad litem when she objected to Petitioner's voluntary dismissal. Seubert's objection, while undertaken in what she perceived to be Acevedo's best interest, caused her to spend extra time on this matter. As the sole beneficiary of Seubert's representation, Acevedo should bear those costs.

Seubert's final argument, that her request for \$1237.50 was reasonable and Chancellor Chandler's standing order inapplicable, is unpersuasive. The standing order, which states that attorney ad litem fees should not exceed \$500, applies "[i]n all cases in which the Court has appointed an attorney ad litem to represent an allegedly disabled person." Here, the Court appointed Seubert as attorney ad litem, so the standing order applied. As to the amount of fees, Seubert failed to show that the Court misapprehended

any material fact or misapplied the law. Thus, there is no basis for reargument on that issue.

For the foregoing reasons, Seubert's motion for reargument is DENIED. The Court's previous order that Acevedo should pay Seubert's fees remains in effect.

IT IS SO ORDERED.

Sincerely,

Donald F. Parsons, Jr.  
Vice Chancellor

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